SUPREME COURT OF THE UNITED STATES.

No. 477.

THE PACIFIC MAIL STEAMSHIP COMPANY, APPELLANT,

VS.

THE UNITED STATES.

AND

No. 478.

THE UNITED STATES, APPELLANT,

VS.

THE PACIFIC MAIL STEAMSHIP COMPANY.

APPEALS FROM THE COURT OF CLAIMS.

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I. Petition.—Filed October 6, 1875.

In the Court of Claims.

PACIFIC MAIL STEAMSHIP COMPANY
against
THE UNITED STATES. } No. 10705.

To the honorable justices of the Court of Claims:

The Pacific Mail Steamship Company respectfully represents:

1. That it is a corporation duly organized under the laws of the State of New York, and having its principal place of business in the city of New York.

2. That on the 23d day of August, 1873, a contract was, in pursuance of section three of the Post-Office Department appropriation act of Congress of June 1, 1872, duly executed between said company and the United States (a copy of which is annexed to and made a part of this petition), by which it was agreed as follows:

3. That said company should transport, in the manner in said contract particularly described, the mails of the United States between the ports of San Francisco and Hong-Kong, in China, touching at Yokohama, Japan, both on the outward and inward passages, to land and receive mails, with a regular connecting branch line of steamers between Yokohama and Shanghai, China, twelve round trips per annum, by an additional monthly line of first-class steamships, to conform, in all respects, to the requirements and provisions of said third section of the act of Congress of June 1, 1872, and the advertisement of the Postmaster-General, issued in accordance therewith, dated June 5, 1872, and of sufficient number to perform the required additional monthly service for and during the term of ten years, commencing on the first day of October, 1873.

4. That the steamships thereafter offered for the aforesaid service should be of not less than four thousand tons register each, built of iron, and with their engines and machinery wholly of American construction, of the best materials, and after approved models, and so con-
2 structed as to be readily adapted to the armed naval service of the United States in case of war, and should be kept up and maintained fully equal to the best state of steamship improvement attained.

5. That said company should carry the United States mails, during the existence of their contracts, without additional charge, on all the steamers they might run upon said line, or any part of it, or any branch or extension thereof.

6. That the United States should pay for said services in transporting, as aforesaid, the mails of the United States, when performed, the sum of $500,000 per annum (being at the rate of $41,666.66 for each round voyage), in quarterly payments, on the receipt, at the Post-Office Department, of satisfactory evidence of the performance of the round voyages embraced in said payments; said compensation, however, to be subject, in case of failure from any cause to perform any of the regular monthly voyages, to a pro rata reduction on account of such omitted voyage or voyages, and to be subject, also, to deductions, fines, and penalties, which might be imposed by the Postmaster-General for failures and irregularities, as in said contract particularly stipulated.

7. That said contract might at any time be terminated by Congress.

8. That said company, on or before the first day of October, 1873, commenced the transportation of the mails of the United States between the ports of San Francisco and Hong Kong, Yokohama, and Shanghai, by an additional monthly line of first-class steamships, conforming in all respects to the requirements of the law, advertisement, and contract aforesaid, and continued said transportation until and after the close of the quarter ending June 30, 1875.

9. That at the time of the passage of said act of June 1, 1872, and of the making of said contract thereunder, said company was already under contract with the United States, dated October 16, 1866, made under act of Congress of February 17, 1865, for a monthly mail service for ten years from about January 1, 1867, between the same ports and at the same annual compensation; and said act of June 1, 1872, and said contract were intended and expressed to secure a similar additional monthly mail on said route upon the same conditions and limitations prescribed by said act of February 17, 1865, and by said contract of October 16, 1866, made in pursuance thereof, thus making the whole service semi-monthly at the rate of one million dollars per annum.

10. That prior to the 20th of February, 1875, said company transported said mails, under the said contract of August 23, 1873, in steamships which had been theretofore accepted by the United States
3 for said mail service, under said contract of October 16, 1866, and in other steamers running upon said line, or branches, or extensions thereof, as contemplated by said act of June 1, 1872, and said contract thereunder; and performed said service with only the omitted voyages, failures, delays, and irregularities, unavoidably or naturally incident to such extended ocean navigation, and, as the company believes, to the satisfaction of the Postmaster-General.

11. That on the 8th day of July, 1874, the City of Peking and the City of Tokio, two new steamships of over 5,000 tons register each, built of iron, and with their engines and machinery wholly of American construction, of the best material, and after approved models, and so constructed as to be readily adapted to the armed naval service of the United States in case of war, which had been erected for said company solely for the purpose of continuing, during the ten years aforesaid, the additional monthly mail service under said contract, were offered to the United States for acceptance, and to be thereafter used in said service.

The question whether said contract of August 23, 1873, was an existing agreement, and the United States bound to inspect said steamships, and accept them for service under said contract, if found to comply with the requirements of law, was, on the 22d of July, 1874, submitted by the Postmaster-General to the Attorney-General, and the latter, on the 3d of August, 1874, rendered his opinion that said contract was obligatory upon the United States, and in full force and effect, and that said company was entitled to have said steamships inspected, and, if accepted, placed in said additional mail service.

The steamships were thereupon, August 7, 1874, duly inspected, and found to comply in all respects with the law of June 1, 1872, and on the 8th of August, 1874, were formally accepted by the Postmaster-General for said additional monthly service, and duly entered into such service, which, after February 20, 1875, and to the close of the quarter ending June 30, 1875, was performed in said steamships, and in steamships of the character heretofore described, to the satisfaction of the Postmaster-General, as said company believes.

The City of Peking, while engaged in said service, sailed from San

Francisco February 20, 1875, carrying the additional monthly mail to Yokohama, Hong-Kong, and Shanghai, reaching San Francisco with said mail on her return voyage April 28, 1875.

12. That by act of Congress of March 3, 1875, it is provided that so much of the aforesaid act of June 1, 1872, "as relates to and authorizes a contract to be made by the Postmaster-General with the Pacific Mail Steamship Company for steamship service between San
4 Francisco, Japan, and China, is hereby repealed, and any such contract made by the Postmaster-General in pursuance of said act is hereby annulled."

13. That there is due to said company from the United States, under said contract of August 23, 1873, seven quarterly payments, accruing between October 1st, 1873, and the close of the quarter ending June 30, 1875, at the rate of $500,000 per annum, amounting to $875,000, less such pro rata deductions on account of omitted voyages, and such fines and penalties for delays or irregularities, as may be found to be due in accordance with the contract. The number of omitted voyages for which deductions should be made, as said company estimates and believes, is eight, which, at $41,666.66 per voyage, amount to $333,333.33. Evidence of the performance of the round voyages embraced in the payments above claimed, and of the compliance by said company with all the provisions of said contract, was duly furnished to, and is now in possession of, the Post-Office Department, and the Postmaster General has been requested to approve and cause to be audited the amount due said company for service between the aforesaid dates, in accordance with said contract, which he declines and refuses to do.

Wherefore the company prays that a judgment may be rendered in its favor for five hundred and thirty-one thousand six hundred and sixty-six dollars and sixty-six cents ($531,666.66).

THE PACIFIC MAIL STEAMSHIP COMPANY,
By J. B. HOUSTON,
2nd Vice President.

NEW YORK, *September 30th*, 1875.

5 The undersigned, J. B. Houston, a resident of New York City, and 2nd vice-president of the Pacific Mail Steamship Company, hereby makes oath that no assignment or transfer of the foregoing claim of said company against the United States, or any part thereof, or any interest therein, has been made; that said company is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true.

J. B. HOUSTON.

Sworn before me this 30th day of September, 1875.
[NOTARIAL SEAL.] GEO. E. WEED,
Notary Public, N. Y. County.

WM. E. CHANDLER,
Attorney for Claimant.

The post office address of the claimant is New York City, and of its attorney, Washington, D. C.

(Indorsement:) 10,705. Pacific Mail Steamship Company v. The United States. Original petition filed Oct. 6, 1875. J. R.

6 This article of contract, made the twenty-third day of August, in the year of our Lord one thousand eight hundred and seventy-three, between the United States of America (acting in this behalf by their Postmaster-General) and the Pacific Mail Steamship Company, with George H. Bradbury and Rufus Hatch, esquires, as sureties, witnesseth:

That whereas the said Pacific Mail Steamship Company were heretofore accepted, in accordance with the stipulations and provisions of sections 3 and 6 of the act of Congress, approved June 1, 1872, entitled "An act making appropriations for the service of the Post-Office Department for the year ending June 30, 1873," and in conformity with the advertisement inviting proposals for said service, issued by the Postmaster-General of the United States on the 5th day of June, 1872, as contractors for the conveyance of an additional monthly mail on the mail steamship route between the port of San Francisco and the port of Hong-Kong, China, via Yokohama, Japan, with a regular branch line running in connection with the main line between Yokohama and Shanghai, China, at the sum of five hundred thousand dollars for the performance of twelve round trips per annum, for a term of ten years from and after the first day of October, eighteen hundred and seventy-three, and upon the same conditions and limitations as prescribed by existing acts of Congress in reference thereto, and the respective contracts made in pursuance thereof:

And whereas the said Pacific Mail Steamship Company, on the 29th day of August, 1872, entered into articles of contract with the United States of America, acting in that behalf by their Postmaster-General, for the conveyance of the said mails in conformity with the provisions and stipulations of the said act of Congress, with Alden B. Stockwell and Henry Clews, esquires, as its sureties in the said contract:

And whereas the said Pacific Mail Steamship Company have desired to procure the discharge and release of the said Stockwell and Clews, as the sureties for the company under said contracts, and have offered to substitute therefor George H. Bradbury, of Englewood, New Jersey, and Rufus Hatch, of the city of New York, esquires, as sureties in their stead:

And whereas the United States, acting by their Postmaster-General in this behalf, have consented and agreed with the said company to accept and receive the said George H. Bradbury and Rufus Hatch as sureties for the performance and service to be rendered by the said steamship company under said contracts, in lieu of said Stockwell and Clews, as sureties therefor and thereunder, and to that end to accept and receive a new contract upon the part of said steamship company, with the said George H. Bradbury and Rufus Hatch as sureties for the performance of the service provided for by said first-named contracts, respectively, and with the like stipulations and conditions:

Now, therefore, these presents witness that the said Pacific Mail Steamship Company, contractors, and the said George H. Bradbury and Rufus Hatch as sureties, do jointly and severally undertake, covenant, and agree with the United States, and do bind themselves to transport the mails of the United States between the ports of San Francisco and Hong-Kong, in China, touching at Yokohama, Japan, both on the outward and inward passages, to land and receive mails, with a regular connecting branch-line of steamers between Yokohama and Shanghai, China, twelve round trips per annum, by an additional monthly line of first-class American steamships, to conform in all respects to the requirements and provisions of the third section of the act of Congress above

cited, approved June 1, 1872, and the advertisement of the Postmaster-General, issued in accordance therewith, dated June 5, 1872, and of

sufficient number to perform the required additional monthly service for and during the term of ten years, commencing on the first of October, eighteen hundred and seventy-three. And the said contractors do further covenant and agree with the United States, and do bind themselves, that the steamships hereafter offered for the service shall be of not less than four thousand tons register each, and shall be built of iron, and, with their engines and machinery, shall be wholly of American construction, of the best materials and after approved models, and shall be so constructed as to be readily adapted to the armed naval service of the United States in case of war; and before acceptance, the officers by whom they are inspected shall report to the Secretary of the Navy and the Postmaster-General whether this condition has been complied with; and, further, that the said steamships, after acceptance by the Postmaster-General, and during the period they may be employed in conveying the mails, shall be kept up by alterations, repairs, and additions, as the exigency may require, fully equal to the best state of steamship improvement attained; and if not so kept up and maintained, they may be rejected by the Postmaster General of the United States, as not meeting the requirements of the act of Congress authorizing the additional monthly service, and other satisfactory steamships required in their place. And the said contractors do further covenant and agree, and do bind themselves, to carry the United States mails during the existence of their contracts, without additional charge, on all the steamers they may run upon said line, or any part of it, or any branch or extension thereof; and they do further covenant and agree to transport, free of expense, on each and every steamer, a mail-agent of the United States, to take charge of and arrange the mail-matter, and to assign to such agent a separate state-room on the upper or main deck, with suitable accommodations for that purpose; and it is further covenanted and agreed by the said contractors, and they do bind themselves:

First. To dispatch an additional steamship from San Francisco on the sixteenth day of each month, and from Hong-Kong on the twenty-seventh of each month, or upon such other days as may be hereafter selected, with the approval of the Postmaster-General, the departures to be always so arranged as to alternate at equal and regular intervals with those of the present monthly line during its continuance, and to form in connection therewith a regular semi-monthly mail service between San Francisco and Hong-Kong via Yokohama.

Second. That the time occupied in making each passage between San Francisco and Hong-Kong shall not exceed thirty-two days in summer and thirty-five days in winter, including detention at Yokohama, which is not to exceeed two days on the outward and three days on the inward voyage; and the time occupied in making each passage on the branch line between Yokohama and Shanghai shall not exceed eight days, including detention at Hiogo and Nagasaki, which is not to exceed twenty-four hours at each port, and further, to perform the service in conformity with such schedule of days and hours of departures and arrivals as shall be approved by the Postmaster-General of the United States.

Third. To transport the mails in a safe and secure manner, free from wet or other injury, in a separate apartment in each steamship, to be fitted up for the exclusive accommodation of the mail.

Fourth. To take the mail and every part of it from and deliver it and every part of it into the post-offices at San Francisco and Hong-Kong,

and the offices of the United States postal agents at Shanghai (China), Yokohama (Japan), and other Japanese ports of call.

They also undertake, covenant, and agree with the United States, and do bind themselves to be answerable for the proper care and transportation of the mails, and accountable to the United States for any
8 damages which may be sustained by the United States through the unfaithfulness which or want of care of their officers, agents, and employés; and they do further covenant and agree that they will not transmit, by themselves or their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail, and that they will not carry, or suffer to be carried, letters or newspapers out of the mail, and they will not knowingly convey any person carrying on the business of transporting letters or other mail matter without the special consent of the Post-Office Department of the United States; and, further, that they will convey, without additional charge, post office blanks, mail-bags, and the occasional special agent on business of the Post-Office Department exclusively, on the exhibition of his credentials.

For which services, when performed, the said Pacific Mail Steamship Company are to be paid by the United States the sum of five hundred thousand dollars per annum (being at the rate of forty one thousand six hundred and sixty-six dollars for each round voyage) in the currency of the United States, in quarterly payments, on the receipt, at the Post-Office Department, of satisfactory evidence of the performance of the round voyages embraced in said payments, provided that the moneys payable under this contract shall be paid while the said Pacific Mail Steamship Company, or its successors in interest, shall maintain and run the line of steamships for the transportation of freight and passengers at present run between New York and San Francisco, via the isthmus of Panama, by the said Pacific Mail Steamship Company, and no longer, said payments, however, to be subject to deductions, fines, and penalties imposed by the Postmaster-General for failures and irregularities, as hereinafter stipulated. It is hereby also stipulated and agreed, by the said contractors and their sureties, that in case of failure, from any cause, to perform any of the regular monthly voyages stipulated for in this contract, a pro rata reduction shall be made from the compensation on account of such omitted voyage or voyages. And it is further stipulated and agreed that suitable fines and penalties shall be imposed, in the discretion of the Postmaster-General, for delays and irregularities in the performance of the service. If delays occur in the arrivals of the steamers according to schedule, the company will be fined in a sum not exceeding two thousand dollars for every forty-eight hours; and should delays occur in their departure, a fine will be imposed not exceeding one thousand dollars for every twenty-four hours, except in cases of unforeseen and uncontrollable events; and suitable fines shall also be imposed, unless the delinquency shall be satisfactorily explained to the Postmaster-General in due time, for failure to take or deliver the mail, or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carrying it in a place or manner that exposes it to depredation, loss, or injury by being wet or otherwise; and for setting up or running an express to transmit letters or commercial intelligence in advance of the mails; or for transmitting knowingly, or after being informed, any one engaged in transporting letters or mail matter in violation of the laws of the United States. And it is hereby further stipulated and agreed that the Postmaster-General shall have the power to determine this contract at any time in case of its being underlet or assigned to any other party, and that he may annul the contract for repeated failures, for violating the post-office laws of the United States; for disobey-

ing the instructions of the department, or for transporting persons conveying mail-matter out of the mails as aforesaid; and that this contract shall, in all its parts, be subject to, and in all respects governed by, the requirements and provisions of the third and sixth sections of the act of Congress approved June 1, 1872, entitled "An act making appro-
9 priations for the service of the Post-Office Department for the year ending June thirty, eighteen hundred and seventy-three;" and also of the act of Congress approved the 21st of April, 1808, entitled "An act concerning public contracts," so far as the provisions of the act last cited shall apply thereto; and it is hereby further stipulated and agreed that this contract may at any time be terminated by Congress.

In witness whereof the said Postmaster-General has caused the seal of the Post-Office Department to be affixed hereto, and has attested the same by his signature, and the said The Pacific Mail Steamship Company by George H. Bradbury, president, and their sureties, have hereto set their hands and seals the day and year first hereinbefore written.

[SEAL.] JNO. A. J. CRESWELL,
Postmaster-General.

Signed, sealed, and delivered by the Postmaster-General in presence of—

JOSEPH H. BLACKFAN.

PACIFIC MAIL STEAMSHIP COMPANY. [SEAL.]
By GEO. H. BRADBURY, *President.*
GEO. H. BRADBURY. [SEAL.]

Attest: W. H. LANE, *Secretary pro tem.*
RUFUS HATCH. [SEAL.]

Witness:
JENNINGS COX.

Signed, sealed, and delivered by the Pacific Mail Steamship Company, by George H. Bradbury, president, and signed by George H. Bradbury and Rufus Hatch in presence of—
HAMILTON FISH, Jr.

POST OFFICE, NEW YORK, *August* , 1873.

The undersigned, postmaster at New York, State of New York, certifies under his oath of office that he is acquainted with the above guarantors, and knows them to be men of property, and able to make good their guaranty.

T. L. JAMES, P. M.,
At New York.

10 II. *Traverse.—Filed December* 11, 1875.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of five hundred and thirty one thousand six hundred and sixty-six dollars and sixty-six cents, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given en-

couragement to rebellion against the said government, denies the said allegation.

THOMAS SIMONS,
Assistant Attorney-General.

11 III. *Amendment to petition allowed in open court.—Filed April 24, 1878.*

The plaintiffs amend their petition by striking out the word "thirty" and the figure "3" in the closing paragraph, and inserting "forty" and "4," so that the amount for which judgment is prayed shall be $541,666.66.

WM. E. CHANDLER,
Plaintiffs' Att'y.

Allowed in open court.

12 IV. *Findings of fact and conclusion of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. On the 16th day of October, 1866, the following contract was entered into between the claimant and the defendants:

This article of contract, made the sixteenth day of October, in the year of our Lord one thousand eight hundred and sixty-six, between the United States of America (acting in this behalf by their Postmaster-General) and the Pacific Mail Steamship Company, with Howard Potter and Francis Skiddy, of New York City, as sureties, witnesseth: That whereas the said Pacific Mail Steamship Company have been accepted, in accordance with the stipulations and provisions of the act of Congress approved February 17, 1865, entitled "An act to authorize the establishment of ocean mail steamship service between the United States and China," and in conformity with the advertisement inviting proposals for said service, issued by the Postmaster-General of the United States, on the 20th of March, 1865, as contractors to carry the mails of the United States between San Francisco, California, and Hong-Kong, in the Chinese Empire, the steamships to touch on each voyage, outward and homeward, at the ports of Honolulu, in the Sandwich Islands, and Kanagawa, in Japan, at the sum of five hundred thousand dollars for the performance of twelve round trips per annum, for a contract term of ten years, to begin on or before the first day of January, eighteen hundred and sixty-seven, and on the day the first steamship of the line shall depart from the port of San Francisco with the mails for China: Now, therefore, the said The Pacific Mail Steamship Company, contractors, and Howard Potter and Francis Skiddy, as sureties, do jointly and severally undertake, covenant, and agree with the United States, and do bind themselves, to transport the mails of the United States between the ports of San Francisco and Hong-Kong, in China, touching to land and receive mails at Honolulu, in the Sandwich Islands, and Kanagawa, in Japan, both on the outward and inward passages, twelve round trips per annum, by a monthly line of first-class American sea-going side-wheel steamships, of from thirty-five hundred to four thousand tons burden each, government measurement, and of sufficient number, not less than four, to perform the required monthly service for and during the term of ten years, commencing on or before the first day of January, eighteen hundred and sixty-seven, and from the day the first steamship

of the line shall depart with the mails from San Francisco for the Sandwich Islands, Japan, and China. And the said contractors do further covenant and agree with the United States, and do bind themselves, that the steamships offered for the service shall be constructed of the best materials, and after approved models, with all the modern improvements adapted to sea-going steamships of the first class, and shall, before acceptance by the Postmaster-General, be subject to inspection and survey by an experienced naval constructor, to be detailed for that purpose by the Secretary of the Navy, whose report shall be made to the Postmaster-General; and further, that the said steamships, after acceptance by the Postmaster-General, and during the period they may be employed in conveying the mails, shall be kept up by alterations, repairs, and additions, as the exigency may require, fully equal to the best state of steamship improvement attained, and if not so kept up and maintained, they may be rejected by the Postmaster-General of the United States as not meeting the requirements of the act of Congress authorizing the establishment of the service, and other satisfactory steamships required in their place. And the said contractors do further covenant and agree to transport, free of expense, on each and every steamer, a mail agent of the United States, to take charge of and arrange the mail matter, and to assign to such agent a separate state-room on the upper or main deck, with suitable accommodations for that purpose. And it is further covenanted and agreed by the said contractors, and they do bind themselves:

First. To despatch a steamship from the port of San Francisco
13 on the first day of each month, and from Hong-Kong on the fifteenth day of each month, at such hours as may be fixed hereafter, or upon such other days as may be hereafter selected, with the approval of the Postmaster-General, in order to make connection with the steamships from New York, and the English lines from China to Southampton and Marseilles; and also that said steamship shall make an average run of not less than two hundred nautical miles a day while at sea; and that the stoppages at the intermediate ports of Honolulu and Kanagawa shall not exceed the time absolutely necessary to land and receive the mails, passengers, and cargo, and receive coals; and further, that after the performance of the second round voyage to Hong-Kong and back, to arrange and adopt a schedule, with the approval of the Postmaster-General, fixing the days and hours of arrival at and departure from the respective terminal and intermediate ports.

Second. To transport the mails in a safe and secure manner, free from wet or other injury, in a separate apartment in each steamship, to be fitted up for the exclusive accommodation of the mail.

Third. To take the mail and every part of it from, and deliver it and every part of it into, the post-offices at San Francisco, Honolulu, Kanagawa, and Hong-Kong, respectively.

They also undertake, covenant, and agree with the United States, and do bind themselves, to be answerable for the proper care and transportation of the mails, and accountable to the United States for any damages which may be sustained by the United States through the unfaithfulness or want of care of their officers, agents, and employés; and they do further covenant and agree that they will not transmit, by themselves or their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail, and that they will not carry or suffer to be carried letters or newspapers out of the mail, and that they will not knowingly convey any person carrying on the business of transporting letters or other mail-matter without the special consent of the Post-Office

Department of the United States. And, further, that they will convey, without additional charge, post-office blanks, mail-bags, and the occasional special agent, on business of the Post-Office Department exclusively, on the exhibition of his credentials. For which services, when performed, the said Pacific Mail Steamship Company are to be paid by the United States the sum of five hundred thousand dollars per annum, in the currency of the United States, in quarterly payments, on the receipt at the Post-Office Department of satisfactory evidence of the performance of the round trips embraced in said payments; subject, however, to deductions, fines, and penalties imposed by the Postmaster-General for failures and irregularities as hereinafter stipulated. It is hereby also stipulated and agreed by the said contractors and their sureties, that in case of failure from any cause to perform any of the regular monthly voyages stipulated for in this contract, a pro rata deduction shall be made from the compensation, on account of such omitted voyage or voyages. And it is further stipulated and agreed that suitable fines and penalties shall be imposed, in the discretion of the Postmaster-General, for delays and irregularities in the performance of the service. After the completion of the second voyage to Hong-Kong and back to San Francisco, and the adoption of a schedule of the days and hours of arrival and departure of the steamships, if delays occur in the arrivals of the steamers, the company will be fined in a sum not exceeding two thousand dollars for every forty-eight hours, and should delays occur in their departure a fine will be imposed not exceeding one thousand dollars for every twenty-four hours, except in cases of unforeseen and uncontrollable events; and suitable fines shall also be imposed, unless the delinquency shall be satisfactorily explained to the Postmaster-General in due time, for failing to take or deliver the mail or any part of it; for suffering it to be wet, injured, lost or destroyed; for carrying it in a place or manner that exposes it to depredation, loss, or injury by being wet or otherwise; and for setting up or running an express to transmit letters or commercial intelligence in advance of the mails; or for transmitting knowingly, or after being informed, any one engaged in transporting letters or mail matter in violation of the laws of the United States. And it is hereby further agreed that the first steamship of the line shall leave the port of San Francisco with the mails for Japan and China on or before the first day of January, one thousand eight hundred and sixty-seven.

And it is hereby further stipulated and agreed that the Postmaster-General shall have the power to determine this contract at any time in case of its being underlet or assigned to any other party; and that he may annul the contract for repeated failures, for violating the post-office laws of the United States, for disobeying the instructions of the department, or for transporting persons conveying mail-matter out of the mails as aforesaid; and that this contract shall in all its parts be subject to, and in all respects governed by, the requirements and provisions of the act of Congress approved February 17, 1865, entitled "An act to authorize the establishment of ocean mail-steamship service between the United States and China," and also of the act of Congress approved the 21st of April, 1808, entitled "An act concerning public contracts," so far as the provisions of the act last cited shall apply thereto.

In witness whereof the said Postmaster-General has caused the seal of the Post-Office Department to be affixed hereto, and has at-
14 tested the same by his signature; and the said The Pacific Mail Steamship Company, by Allen McLane, president, and their sure-

ties, have hereto set their hands and seals the day and year first hereinbefore written.

[SEAL.] ALEX. W. RANDALL,
Postmaster-General.

Signed, sealed, and delivered by the Postmaster-General in the presence of—

JOSEPH H. BLACKFAN.

THE PACIFIC MAIL STEAMSHIP CO.,
[SEAL.] By ALLAN McLANE,
President.
HOWARD POTTER.
FRANCIS SKIDDY.

Attest:
THEO. T. JOHNSON,
Secretary.

II. Under said contract, seven steamships were, from time to time, inspected and accepted for that service, according to the terms of said contract, the names of which were, Colorado, Great Republic, China, Japan, America, Alaska, and Constitution. These were more than were necessary for the performance of said service.

III. In the year 1872, the claimant established a second line of steamships from San Francisco to Japan and China and back, leaving the former port about the 16th day of each month. This line was not established under the aforesaid contract, though some of the above named steamships were engaged in performing this service. The mails of the United States, outward and inward, were sent upon the vessels which composed said second line, from the 16th of May, 1872, till the 20th of September, 1873, and for all the transportation of mails by said vessels during that time the claimant requested and received from the Post-Office Department the sea-postages on said mails, aside from and independent of the subsidy under the contract of 1865, and never made claim for any other compensation therefor.

IV. On the 5th of June, 1872, the Postmaster-General published the following advertisement:

PROPOSALS FOR MAIL-STEAMSHIP SERVICE BETWEEN SAN FRANCISCO, JAPAN, AND CHINA.

POST-OFFICE DEPARTMENT,
Washington, June 5, 1872.

In accordance with the provisions of sections 3 and 6 of the act of Congress approved June 1, 1872, entitled "An act making appropriations for the service of the Post-Office Department for the year ending June thirty, eighteen hundred and seventy-three," which sections are in the words and figures following, viz:

"SEC. 3. * * * And the Postmaster-General is hereby authorized to contract with the lowest bidder, within three months after the passage of this act, after sixty days' public notice, for a term of ten years from and after the first day of October, eighteen hundred and seventy-three, for the conveyance of an additional monthly mail on the said route, at a compensation not to exceed the rate per voyage now paid under the existing contracts, and upon the same conditions and limitations as prescribed by existing acts of Congress in reference thereto, and the respective contracts made in pursuance thereof; and the con-

tractors under the provisions of this section shall be required to carry the United States mails during the existence of their contracts, without additional charge, on all the steamers they may run upon said line, or any part of it, or any branch or extension thereof: Provided, That all steamships hereafter accepted for said service shall be of not less than four thousand tons register each, and shall be built of iron, and with their engines and machinery shall be wholly of American construction, and shall be so constructed as to be readily adapted to the armed naval service of the United States in case of war, and before acceptance the officers by whom they are inspected shall report to the Secretary of the Navy and the Postmaster-General whether this condition has been complied with: Provided, That in all cases the officers of the ships employed in the service herein provided for shall be citizens of the United States, and that persons of foreign birth, who have according to law declared their intention to become citizens of the United States, may be employed as though they were citizens within the meaning of this section, or of any act or acts specified in the act of June twenty-eight, eighteen hundred and sixty-four. And the government of the United States shall have the right in case of war to take for the use of the United States any of the steamers of said line, and in such case pay a reasonable compensation therefor: Provided, The price paid shall in no case exceed the original cost of the vessel so taken; and this provision shall extend to and be applicable to the steamers of the Brazilian line hereafter provided for."

"SEC. 6. That if the contract for the increase of the mail service between San Francisco and China and Japan to a semi monthly service shall be made with the Pacific Mail Steamship Company, or shall be performed in the said company's ships, or the ships of its successors in interest, the moneys payable under such contract shall be paid while the said company or its successors in interest shall maintain and run the line of steamships for the transportation of freight and passengers, at present run between New York and San Francisco, via the Isthmus of Panama, by the said Pacific Mail Steamship Company, and no longer; Provided, That said requirement shall in all respects apply to any party contracting for the mail-service between San Francisco and China and Japan, as well as to the Pacific Mail Steamship Company"—

proposals will be received at the Post-Office Department, in the city of Washington, until 3 o'clock p. m. on Monday the 12th day of August, 1872, for conveying the mails of the United States by means of an additional monthly line of first-class American sea-going steamships, of not less than four thousand tons register, each, and of sufficient number to perform twelve round trips per annum between the port of San Francisco and the port of Hong-Kong (China), touching at Yokohama (Japan) with a regular branch line, running in connection with the main line, between Yokohama and Shanghai (China), for a contract term of ten years from and after the first day of October, eighteen hundred and seventy-three.

Each bid should name the time proposed to be occupied in performing the passages each way, including stoppages at intermediate ports, and also the length of the stoppages at each of the intermediate ports. Schedules of sailing-days, stating the proposed days and hours of departure from each port, as well as the proposed days and hours of arrival, should also accompany each bid. The departures must be so arranged as to alternate at equal and regular intervals with those of the present monthly line during its continuance, forming a regular semi-monthly service in connection therewith; such schedules, however, to

be subject to the approval of the Postmaster-General, and to adjustment or alteration by his order, from time to time, as the interests of the postal service may require.

The steamships offered for the service must be American-built steamships of the first class, in all respects conforming to the requirements of the laws authorizing the service, and, before acceptance, they will be subject to inspection and survey by an experienced naval constructor, to be detailed for that purpose by the Secretary of the Navy.

Proposals must conform, in all particulars, to the provisions and requirements of the acts of Congress approved February 17, 1865, and February 18, 1867, and of sections 3 and 6 of the above-cited act of June 1, 1872, and must be properly guaranteed, with satisfactory testimonials, that the bidder or bidders and their guarantors are men of property and abundantly able to make good their tender and guarantee.

The bidder or bidders must be an American citizen or citizens.

The bidder's name and residence, and the name of each member of the firm when a partnership offers, should be distinctly stated. If made by a corporation, the bid must be accompanied by a duly authenticated copy of the charter or articles of incorporation and a list of officers and directors.

All bids exceeding the sum of $5,000 must be accompanied by a certified check or draft, payable to the order of the Postmaster-General, upon some solvent national bank, of not less than 5 per centum of amount of one year's pay proposed in such bid or bids, such check or draft to be subject to all the conditions and provisions of existing laws in respect to forfeiture.

Any assignment or transfer of an ocean-mail contract is expressly forbidden by law. Such assignments or transfers are null and void, and the Postmaster General is required to determine any contract in case of its being underlet or assigned.

Proposals should be sent under seal to "The Superintendent of Foreign Mails," with the words "Mail proposals, Japan and China route," written on the face of the address; and they should be dispatched in time to be received at this department on or before three o'clock p. m. of Monday, the 12th day of August next, which will be the last day for receiving proposals under this advertisement.

JNO. A. J. CRESWELL,
Postmaster-General.

V. The claimant made the following proposal in answer to said advertisement:

OFFICE OF THE PACIFIC MAIL STEAMSHIP COMPANY,
59 & 61 *Wall Street, New York, August* 10, 1872.

To the POSTMASTER-GENERAL, *Washington, D. C.*:

The Pacific Mail Steamship Company hereby propose to convey the mails of the United States between San Francisco and Hong-
16 Kong via Yokohama, with a regular connecting branch line between Yokohama and Shanghai, for ten years from and after the first day of October, 1873, for the sum of five hundred thousand dollars per annum, being at the rate of forty-one thousand six hundred and sixty-six $\frac{66}{100}$ dollars for each round voyage.

This bid is made and said service is to be performed in all respects in accordance with the provisions of the (3rd) third and (6th) sixth sections of the post office appropriation act, approved June 1, 1872, and the ad-

vertisement of the Postmaster-General, dated June 5, 1872, copy whereof is hereto annexed and made a part hereof.

The time to be occupied between San Francisco and Hong Kong will not exceed thirty-two days in summer and thirty-five in winter, including detention at Yokohama, which will not exceed two days on the outward and three days on the inward voyage.

The time between Yokohama and Shanghai will not exceed eight days, and the detention at Hiogo and Nagasaki will not exceed twenty-four hours at each port.

The schedule to be arranged as follows:

Leave San Francisco		16th
Arrive at Yokohama	summer..	9th
Arrive at Yokohama	winter..	12th
Leave Yokohama	summer..	11th
Leave Yokohama	winter..	14th
Arrive at Hong-Kong	summer..	18th
Arrive at Hong-Kong	winter..	21st
Leave Hong-Kong		27th
Arrive at Yokohama		5th
Leave Yokohama		8th
Arrive at San Francisco	summer..	29th
Arrive at San Francisco	winter..	2nd

Each of these dates, except those of departure from San Francisco and Hong-Kong, is varied by the number of days in the preceding month, and the length of the voyage will be considerably reduced when the new steamships hereinafter referred to are put in commission.

We are now building two iron propellers of about 4,500 tons register, capable of steaming 12 knots, and propose, as soon as practicable, with the limited facilities now available in America, to build two more steamers of like construction, but larger and of higher speed, all of which we shall offer for the service in question. Until they can be put into commission, and afterwards, whenever circumstances may require us to relieve them temporarily, we propose to perform the service with one of the steamships heretofore accepted for the China mail service, viz, America, Japan, China, Great Republic, Alaska, and Colorado, or in case of need with the Constitution, heretofore accepted as a spare steamer for said service.

* * * * * * *

PACIFIC MAIL STEAMSHIP COMPANY,
A. B. STOCKWELL, *President.*

VI. On the 16th of August, 1872, the said proposal of the claimant was accepted by the Postmaster-General, and on the 29th of that month a written contract was entered into between the claimant and the defendants, in pursuance of said proposals and acceptance; but was afterwards, on the 23d of August, 1873, superseded by a new contract, duly executed by the claimant and the Postmaster-General, which is the same described in and annexed to the petition in this case.

VII. On the 24th of October, 1873, the Post-Office Department sent to the claimant the following letter:

No. 30406.] POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., October 24, 1873.

SIR: I am directed by the Postmaster-General to request that you

will furnish him with a full statement in writing of the reasons which have prevented your company from commencing the performance of the additional monthly mail-service between San Francisco and Hong-Kong, via Yokohama, authorized by sections 3 and 6 of the act of Congress approved June 1, 1872; which service, under the provisions of the law and contract, should have been commenced on the 1st of October instant.

You will also please state what preparations you are making for the commencement of this additional mail-service to Japan and China, and when the company expects to be able to commence said service.

At your recent interview with the Postmaster-General, at this department, you explained to him verbally the causes which prevented your company from commencing this additional mail-service on the 1st instant, as required by the law and contract, and also stated that
17 the company was making every effort possible to comply with the requirements of the law and contract at the earliest practicable date; but there is nothing on the files of this department furnishing any information on the subject.

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

GEO. H. BRADBURY, Esq.,
President of the Pacific Mail Steamship Co., New York City.

To this letter the following answer was sent by the claimant:

OFFICE OF PACIFIC MAIL STEAMSHIP CO.,
59 & 61 *Wall Street, New York, November* 1, 1873.

SIR: In the matter of the contract between the Postmaster-General and the Pacific Mail Steamship Company for an additional semi-monthly mail-service between San Francisco, Japan, and China, said service to be performed with American-built iron steamships of not less than 4,000 tons register, and to have been commenced October 1, 1873, we beg to submit the following, which will explain the reason of our failure to have placed the ships on the line as per contract.

Immediately after the passage of the act of Congress providing for a semi-monthly mail-service to China and Japan, in June, 1872, this company entered into a contract for the construction of two (2) iron screw-steamers of upward of 4,000 tons register, to class "100 A Lloyds," to be fitted with compound engines, guaranteed to make a speed of not less than fourteen and one-half (14½) knots per hour, and to be completed in time to commence the service as specified in the act.

The contractor began work upon these ships as early as it was possible for him to secure so large an amount of material, of a weight and size never before used by ship-builders in America, and so rapidly did he accumulate this material that we had reasonable hopes of having the ships in readiness at the appointed time. But, as the work progressed, unthought-of obstacles presented themselves, and the skill of the most skillful was baffled in the attempt to overcome them. First and foremost of the difficulties which beset the contractor was the information received from the proprietors of the rolling-mills that they had no machinery large enough to roll the beams required for these ships. New machinery had to be prepared, and before it was completed and in operation five months of valuable time had been lost. With the finishing of the beams our contractor took new courage. Then came the strike of the puddlers in the iron-mills, upon whose labor he depended for angles

and smaller iron-work. Then came the labor-strike for less time and increased wages, and finally the long and severe winter of 1872–1873, when labor upon material and metals necessary to be done out of doors was seriously retarded, and at times entirely stopped.

To the foregoing might be added many minor impediments, but equally potent in retarding the work. Against these untoward circumstances the directors and officers of the company have struggled with persistent energy, and since the early spring the work upon the ships has been pushed with renewed vigor, and it is with gratification that we now announce the near completion of the hulls of the two ships. The first will be launched early in December, while the machinery for both is so far advanced as to cause no delay. These ships, when completed and on the route, will class amongst the finest in the world, and indeed it is the testimony of experts of our own and other countries who have examined them that they will be in most respects superior to any other ships afloat, and, when ready for service, they will have cost us nearly two and one-quarter millions of dollars. In addition to these vessels, we had previously contracted for, and have now completed, four iron screw steamers of about 3,000 tons register, and with a carrying capacity fully equal thereto, all of which are now employed in our Atlantic and Pacific lines.

Our new iron ship Colima is on her voyage to the Pacific, and is due in San Francisco December 1st, from which port she will take her departure for China December 16th. While it is true that the Colima does not register 4,000 tons, she has a carrying capacity equal to that number, and we hope to have her accepted temporarily upon the China line, until we can place in service the ships now constructing, in pursuance of our contract with the government.

We regret exceedingly that these ships should not have been ready to commence the service at the specified time, but in view of all the circumstances enumerated we sincerely hope that you may feel disposed to be lenient with us, thereby enabling us to carry out the requirements of the contract, and thus aiding the only established American line of steamships engaged both in the coasting and foreign trade, and permitting it to become a pride and honor to the great government under whose flag it sails its ships and to whom it looks for protection.

We have the honor to ask your attention to the fact that we are performing the semi-monthly service with our mail-steamers, now accepted as such by the department under our first China mail-contract, and that we propose placing on the route, in addition, our new iron ship Colima (now en route) and the new iron ship Granada, and with these 18 and the mail steamers now accepted by the department we propose to perform a semi-monthly service until the ships referred to shall take the place of the wooden mail-steamers now on the line; to all of which we ask your kind permission and support, promising an equally faithful and effective compliance with the terms of this, as we may justly state we have maintained for seven years under those of the first contract.

We would also beg your attention to the fact that in May, 1872, we put on a semi-monthly line of steamers between San Francisco and China, and that, with three unavoidable exceptions, we have continued it to this time, with our regular mail-steamers, and with others chartered for the purpose at a heavy cost to the company.

This was done with a view of increasing commercial and mail facilities between the United States, China, Japan, and India, and we have uninterruptedly run, in connection therewith, five steamers per month

between the five ports (four in Japan, and Shanghai in China) comprising our branch line, which we are required to perform but once a month under our contract of January 1, 1867. All this extra and voluntary service has largely increased the receipts of the United States, both in duties and postage, and has facilitated the interests of commerce and travel with those countries and around the world in a marked degree, and these at the cost, and as a direct result, of the enterprise of this company.

We would ask your attention, most respectfully, to the following schedule of departures of steamers, both from San Francisco and Hong-Kong, for the remainder of the year 1873, and we will take pleasure in forwarding the table for the year 1874 as soon as the same shall have been prepared:

From San Francisco.—Alaska, October 1; China, October 16; Colorado, November 1; Japan, November 17; Great Republic, December 1st; Colima, December 16th.

From Hong-Kong.—Japan, October 12; Great Republic, October 27; Alaska, November 12; China, November 27; Colorado, December 12; Japan, December 27.

In conclusion we beg to submit for your consideration the full facts as presented herein, and we hope that you may find it entirely consistent and within your power to allow us to continue the service as we are now doing, until we shall be able to place all our new ships upon the line, when we feel sure you will have no reason to regret that you extended a helping hand to one of America's greatest enterprises in a time of need.

We have the honor to be, sir, your obedient servants,

PACIFIC MAIL STEAMSHIP COMPANY,
By S. K. HOLMAN, *Vice-President.*

Hon. JNO. A. J. CRESWELL,
Postmaster General, Washington, D. C.

VIII. From the date of the said acceptance of claimant's proposals until the month of August, 1874, no iron steamship was offered by the claimant for the service required by the last-named contract. On the 8th of that month the Postmaster-General accepted for that service the steamships City of Peking and City of Tokio, and gave the claimant notice of such acceptance by the following letter:

No. 32662.] POST-OFFICE DEPARTMENT,
Washington, D. C., August 8, 1874.

SIR: I have to inform you that the board of naval officers detailed by the Secretary of the Navy to inspect, at New York, the new iron steamships City of Peking and City of Tokio tendered by your company, under date of 8th July last, for inspection and acceptance for service in carrying the United States mails between San Francisco and China and Japan, under the contract of August 23, 1873, have reported to me, under date of 7th August instant, that the requirements of the act of June 1, 1872, have been fully complied with in their construction and equipment, the said steamships being of the required tonnage, built of iron, and wholly of American manufacture, and so constructed as to b readily adapted to the armed naval service of the United States in case o war.

The said steamships City of Peking and City of Tokio are, therefore, accepted for the additional monthly mail-service between San Francisco,

Japan, and China, authorized by the act of June 1, 1872, to take effect on their arrival at the port of San Francisco to commence said service; with the distinct understanding, however, that as no appropriation was made by Congress at its last session for the additional monthly service on said route, no payment can be made therefor under the contract with your company until Congress shall have further legislated upon the subject.

I am, very respectfully, your obedient servant,

J. W. MARSHALL,
Postmaster-General.

RUSSELL SAGE, Esq.,
President of the Pacific Mail Steamship Co., New York City.

19 IX. After the 1st day of October, 1873, the claimant continued to dispatch steamers from San Francisco to Japan and China, on or about the middle of each month, in part those which had been accepted by the Post-Office Department for service under the aforesaid contract of February 17, 1865, and in part those which had not been so accepted; and the steamers hereinafter in this finding named left San Francisco on the day named in connection with each, and performed a round voyage out to Japan and China, and back to San Francisco, as follows:

China	October 17, 1873.
Japan	November 17, 1873.
Colorado	February 14, 1874.
Alaska	April 18, 1874.
Granada	May 16, 1874.
Japan	June 12, 1874.
Colima	July 14, 1874.
Japan	August 29, 1874.
Vancouver	September 19, 1874.
Vasco de Gama	October 19, 1874.
Vancouver	December 12, 1874.
Vasco de Gama	January 16, 1875.

Of these steamers the Granada, Colima, Vancouver, and Vasco de Gama had never been accepted by the government for service in the transportation of mails.

By all of said steamers mails were taken outward and inward on those voyages, and sea-postages thereon from October 1, 1873, to the 31st of December, 1873, were, on the 11th of February, 1874, paid by the Post-Office Department to the claimant, amounting to $1,510.81.

Afterwards, for like service up to September 17, 1874, the Post-Office Department recognized the right of the claimant to the sum of $5,195,61, for sea-postages to that date, and for like service up to December 31, 1874, the said department recognized the right of the claimant to the sum of $2,904.23 for sea-postages to that date; and for each of those sums a warrant and draft was issued by said department in favor of the claimant; but the claimant, on the 6th of April, 1875, declined to accept the same as compensation for mail transportation, and announced its intention to insist on its full rights under the aforesaid contracts of August 29, 1872, and August 23, 1873.

X. On the 20th of February, 1875, the said steamship City of Peking left San Francisco on her first voyage to Japan and China, and she arrived at Yokohama on the 13th of March, and at Hong-Kong on the 25th of March; and on her return arrived at Yokohama on the 7th of

April, and at San Francisco on the 28th of April, 1875. On the said voyage, out and back, the City of Peking carried the United States mails under the contract sued on.

20 *Conclusion of law.*

Upon the foregoing facts, and the additional facts found on the request of the defendants, the majority of the court find as a conclusion of law that the claimant is entitled to recover for the voyage of the steamship City of Peking, stated in Finding X, the sum of forty-one thousand six hundred and sixty-six dollars and sixty-six cents; and is not entitled to recover any more of the claims sued on. For that sum the claimant should have judgment.

21 V.—*Request of claimant for an additional finding of fact, and ruling thereon.*

The claimants request the court to find that the City of Peking, on her voyage commencing February 20, 1875, carried the United States mails under the contract of August 23d, 1873.

By their att'y,

WM. E. CHANDLER.

On the foregoing request the court makes the following ruling, to wit: Allowed, and added to Finding X.

22 VI.—*Request of defendants for additional findings of fact, and rulings thereon.*

The defendants respectfully request the court to find the following additional facts:

I. That the claimant commenced the service provided for in the contract of the 16th day of October, 1866, by dispatching the steamer Colorado with the mails, from San Francisco to China, on the 1st day of January, 1867.

II. That on the 20th day of March, 1867, a further contract for mail service was entered into by and between the claimant and defendants, which contract was as follows:

This article of contract, made the twentieth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, between the United States of America (acting in this behalf by their Postmaster-General) and the Pacific Mail Steamship Company, with Howard
23 Potter and Francis Skiddy, of New York City, as sureties, witnesseth:

That whereas the contract executed by the said Pacific Mail Steamship Company on the sixteenth day of October, A. D. one thousand eight hundred and sixty-six, for the performance of the ocean mail steamship service between the United States, Japan, and China, authorized by act of Congress approved February seventeen, eighteen hundred and sixty-five, provides that the steamships of said company shall touch on each voyage, outward and homeward, at the port of Honolulu, in the Sandwich Islands, as required by the aforesaid act; and whereas the second section of the act of Congress entitled "An act making appropriations for the service of the Post-Office Department during the fiscal year ending June thirtieth, eighteen hundred and sixty-eight, and for

other purposes," approved February eighteenth, eighteen hundred and sixty-seven, provides as follows, to wit: "That so much of the act of Congress approved February seventeenth, eighteen hundred and sixty-five, authorizing said service, as requires the said steamships to
24 touch at Honolulu, in the Sandwich Islands, shall be, and the same is hereby, repealed, upon the express condition, however, that the contractors for said steamship service shall enter into contract, to the satisfaction of the Postmaster-General, agreeing to establish, within five months from the passage of this act, in lieu of said service released, a branch line of steamship service, carrying the United States mails, between the port in Japan used by the main line of steamships and the port of Shanghai, in China, making continuous regular trips, connecting with the main line, both on the outward and homeward voyages, under the direction of the Postmaster General, which service shall be performed by first class American sea-going steamships, and without additional charge to the United States"; and whereas the said Pacific Mail Steamship Company have accepted the terms and provisions of the said act:

Now, therefore, the said The Pacific Mail Steamship Company, contractors, and Howard Potter and Francis Skiddy, as sureties,
25 in consideration of the release granted by said act of Congress from touching with their steamships to land and receive mails at Honolulu, in the Sandwich Islands, on both outward and inward passages between the United States, Japan, and China, do jointly and severally undertake, covenant, and agree with the United States, and do bind themselves, to establish, in lieu of said service released, a branch line of first-class American sea-going steamships, carrying the United States mails, without additional charge, between Yokohama (Kanagawa) or other port in Japan used by the main line of steamships plying between San Francisco and Hong Kong, and the port of Shanghai, in China, making continuous regular monthly trips between said ports, in connection with the main line, both on the outward and homeward voyages, according to the terms and conditions of the aforesaid act, approved February eighteenth, one thousand eight hundred and sixty-seven.

And they do further stipulate and agree to commence this
26 branch service from Yokohama to Shanghai and back in connection with the steamship leaving San Francisco on third July, eighteen hundred and sixty-seven, for Yokohama and Hong Kong and her return, and to maintain the same during the continuance of their contract.

And it is further covenanted and agreed between the parties hereto, that the stipulations and provisions of the original contract, executed with said company on the sixteenth day of October, A. D. one thousand eight hundred and sixty-six, so far as they are applicable, shall also apply to the service to be performed on the branch line between Yokohama or other port in Japan used by the main line and the port of Shanghai in China.

In witness whereof the said Postmaster-General has caused the seal of the Post-Office Department to be affixed hereto, and has attested the same by his signature; and the said The Pacific Mail Steamship Company, by Allan McLane, president, and their sureties, have hereto set their hands and seals the day and year first hereinbefore written.

[SEAL.] ALEX. W. RANDALL,
Postmaster-General.

27 Signed, sealed, and delivered by the Postmaster-General, in presence of—
JOSEPH H. BLACKFAN.

PACIFIC MAIL STEAMSHIP COMPANY,
By ALLAN McLANE, *President.* [SEAL.]
HOWARD POTTER. [SEAL.]
FRANCIS SKIDDY. [SEAL.]

Attest:
THEODORE T. JOHNSON,
Secretary.

Signed, sealed, and delivered by Pacific Mail Steamship Company, and Howard Potter and Francis Skiddy, in presence of—
RICHARD B. IRWIN.

III. From the date of the acceptance of claimant's proposals until the month of August, 1874, no steamship of 4,000 tons was offered by the claimant for the service required by the contract entered into between the parties on the 29th of August, 1872, and afterwards superseded by the contract of the 23rd of August, 1873, the same as described and annexed to the petition in this case. On the 8th
28 of that month the Postmaster-General accepted for that service the steamship' City of Peking and City of Tokio, and gave the claimant notice of such acceptance by the following letter:

No. 32662.] POST-OFFICE DEPARTMENT.
Washington, D. C., August 8, 1874.

SIR: I have to inform you that the board of naval officers detailed by the Secretary of the Navy to inspect, at New York, the new iron steamships City of Peking and City of Tokio, tendered by your company under date of 8th July last for inspection and acceptance for service in carrying the United States mails between San Francisco and China and Japan, under the contract of August 23, 1873, have reported to me, under date of 7th August instant, that the requirements of the act of June 1, 1872, have been fully complied with in their construction and equipment, the said steamships being of the required tonnage, built of iron, and wholly of American manufacture, and so constructed as to be readily adapted to the armed naval service of the United States in case of war.

29 The said steamships City of Peking and City of Tokio are, therefore, accepted for the additional monthly mail service between San Francisco, Japan, and China, authorized by the act of June 1, 1872, to take effect on their arrival at the port of San Francisco; to commence said service with the distinct understanding, however, that, as no appropriation was made by Congress at its last session for the additional monthly service on said route, no payment can be made therefor under the contract with your company until Congress shall have further legislated upon the subject.

I am, very respectfully, your obedient servant,
J. W. MARSHALL,
Postmaster-General.

RUSSELL SAGE, Esq.,
President of the Pacific Mail Steamship Co., New York City.

IV. That the said sea postages, amounting to $1,510.81, paid by the Post-Office Department to the claimant on the 11th of February, 1874,

for the carrying of the mails from San Francisco to China, from
30 and inclusive of October 1st, 1873, to and inclusive of December 31st, 1873, as mentioned in Finding IX, page 8 of the findings, were paid at the request of the claimant.

V. That after the sailing of the City of Pekin from San Francisco to China, on the 20th of February, 1875, as stated in Finding X, page 8 of the findings, the claimant continued to transport the mails in the same ship, and over the same route, between the same ports, and at the same time (about the middle of the month), as it had from the 1st of October, 1873, down to and including the 16th day of January, 1875, as set forth in Finding IX, page 8 of the findings. And this subsequent transportation of the mails between San Francisco and China in no way differed from the transportation of them by it previously, to wit, from October 1st, 1873, down to and inclusive of the 16th of January, 1875, as set forth in Finding IX, page 8 of the findings. Nor yet differing from the transportation of them by it, from May 16th, down to and inclusive of the 20th of September, 1873, as set forth in Finding III, page 3 of the findings.

THOMAS SIMONS,
Assis't Att'y-General.

31 Upon the foregoing requests, the court makes the following ruling to wit:

Of the foregoing requests the first, second, and fourth are allowed; the third is refused because it is a mere repetition of the court's Finding VIII; and the fifth is refused because not sustained by the evidence.

(NOTE BY THE CLERK.—The court filed no opinion in this case.)

32 VII.—*Final judgment.*

At a Court of Claims held at the Capitol in the city of Washington on the 11th day of June, A. D., 1878, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said the Pacific Mail Steamship Company do have and recover of and from the United States the sum of forty-one thousand and six hundred and sixty-six dollars and sixty-six cents ($41.666\frac{66}{100}$).

33 VIII.—*Application of claimant for and the allowance of an appeal.*

PACIFIC MAIL STEAMSHIP COMPANY
vs.
THE UNITED STATES. } No. 10705.

From the judgment rendered in the above-entitled cause, on the 11th day of June, 1878, in favor of the claimants, the claimants by their attorney, on the 5th day of September, 1878, make application for and give notice of an appeal to the Supreme Court of the United States.

WM. E. CHANDLER,
Att'y for Claimants.

Filed September 5, 1878.

AT CHAMBERS, *Sept.* 5, 1878.

Allowed.

C. D. DRAKE,
Chief Justice.

34 IX.—*Application of defendants for appeal and order allowing same.*

From the judgment rendered in the above entitled cause on June 11, 1878, in favor of claimant, the defendants, by their Attorney General, on the 7th day of September, 1878, make application for and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney-General.

Filed September 7, 1878.

AT CHAMBERS.

Allowed.

C. D. DRAKE,
Chief Justice.

35 In the Court of Claims.

THE PACIFIC MAIL STEAMSHIP COMPANY
vs.
THE UNITED STATES. } No. 10705.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the several requests of the claimant and of the defendants for additional findings of fact, and the rulings of the court thereon, of the final judgment of the court, of the application of the claimant for and the allowance of an appeal to the Supreme Court of the United States, of the application of defendants for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this eleventh day of September, A. D. 1878.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 477. The Pacific Mail Steamship Company, appellant, vs. The United States. And No. 478. The United States, appellants, vs. The Pacific Mail Steamship Company. Court of Claims. Filed 16th September, 1878.

OFFICE SUPREME COURT U.S.
FILED
JAN 7 1881
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1880.

THE PACIFIC MAIL STEAMSHIP COMPANY, *Appellant*, vs. THE UNITED STATES. } No. 201.

AND

THE UNITED STATES, *Appellant*, vs. THE PACIFIC MAIL STEAMSHIP COMPANY. } No. 202.

APPEALS FROM THE COURT OF CLAIMS.

Brief for the Pacific Mail Steamship Company.

The Act of Congress, approved February 17th, 1865, entitled "An Act to authorize the establishment of Ocean "Mail Steamship Service between the United States and "China," provided as follows:

"That the Posmaster General be and he is hereby au- "thorized to invite proposals, by public advertisement, for "mail steamship service between the port of San Francisco, "in the United States, and some port or ports in the Chinese "Empire, touching at Honolulu, in the Sandwich Islands, "and one or more ports in Japan, by means of a monthly

"line of first class American sea going steamships, to be of "not less than three thousand tons burden each, and of "sufficient number to perform twelve round trips per an- "num, between said ports, and to contract with the lowest "responsible bidder for said service, for a term of not more "than ten years, to commence from the day the first steam- "ship of the proposed line shall depart from the port of "San Francisco with the mails for China; *provided*, that no "bid shall be considered which shall amount to more than "five hundred thousand dollars for the twelve round trips "per annum, nor unless the same is from a citizen or citi- "zens of the United States, etc.

"SEC. 2. That any contract which the Postmaster Gen- "eral may execute under the authority of this act shall go "into effect, on or before the first day of January, one thou- "sand eight hundred and sixty-seven, and shall in addition "to the usual stipulations of ocean mail steamship con- "tracts, provide that the steamships accepted for the service "shall be constructed of the best material, and after ap- "proved models, with all the modern improvements adapted "to sea going steamships of the first class, and shall be "subject to inspection and survey by an experienced naval "constructor, to be detailed for that purpose by the Secre- "tary of the Navy, whose report shall be made to the Post- "master General, etc." (*See* 18, *Stat. at Large*, 430.)

In pursuance of the foregoing statute, a contract was made by the Postmaster General with the Pacific Mail Steamship Company, for the service provided for in said Act, on the 16th day of October, 1866. (*See record, pp.* 8, 9 *and* 10.)

The service provided for in that contract was duly performed by the Company in the Steamships "Colorado" and "Great Republic," "China," "Japan," "America," "Alaska" and "Constitution," which were inspected and accepted by the Government for that service. (*Record p.* 11.)

On the 1st day of June, 1872, the Act was passed provid-

ing for an additional monthly service upon this line. (17 *St. at Large*, 201–2.)

And on the 5th of June, 1872, the Postmaster General published his advertisement, asking for proposals for the service under the last mentioned Act, which advertisement quotes the provisions of the Act. (*Record, pp.* 11, 12 *and* 13.)

The proposal of the Company in reply to the Postmaster General may be found on pages 13 *and* 14 *of the record,* dated August 10th, 1872.

The contract was thereupon executed by the Company with the Postmaster General on behalf of the United States, which may be found on pages 4, 5, 6 *and* 7 *of the record,* dated the 23d day of August, 1873.

After the 1st day of October, 1873, the Company dispatched steamers monthly, as follows: from San Francisco to Japan and China, which steamers made round trips out and back, and carried the United States Mails:

The China, - - -	October 17th, 1873,
The Japan, - - -	November 17, 1873,
The Colorado, - -	February 14th, 1874,
The Alaska, - - -	April 18th, 1874,
The Granada, - -	May 16th, 1874,
The Japan, - - -	June 12th, 1874,
The Colima, - - -	July 14th, 1874,
The Japan, - - -	August 29th, 1874,
The Vancouver, - -	September 19th, 1874,
The Vasco de Gama, -	October 19th, 1874,
The Vancouver, - -	December 12th, 1874, and
The Vasco de Gama, -	January 16th, 1875.

This service was in addition to the monthly service under the contract of 1866.

Of the foregoing ships the "Granada," "Colima," "Vancouver" and "Vasco de Gama" had not been inspected and accepted by the Government under either of the contracts. The others, viz: the "China," "Japan," "Colorado" and "Alaska" had been accepted for service under the said contract of 1866. (*See record, p.* 18.)

On the 8th of August, 1874, the new iron steamships "City of Peking" and "City of Tokio," were accepted by the Government for service under the contract of 1873. (*Record, p.* 17.)

And on the 20th of February, 1875, the said steamship "City of Peking" left San Francisco, on the voyage to Yokohama, which she reached on the 13th of March, and Hong Kong on the 25th of March, and returning arrived at Yokohama on the 7th of April, and San Francisco on the 28th. On the said voyage, the "City of Peking" carried United States mails under the contract of 1873. (*Record, p.* 18, *No.* 10 *of Findings.*)

On the 3d of March, 1875, the law authorizing the contract of 1873 was repealed, and the contract annulled by the following provisions:

* * * * * * "That so much of an "act, entitled an Act making appropriations for the service "of the Post Office Department, for the year ending June "30th, 1873, approved June 1st, 1872, as relates to, and au- "thorizes a contract to be made by the Postmaster General "with the Pacific Mail Steamship Company, for steamship "service between San Francisco, Japan and China, is here- "by repealed, and any such contract made by the Postmas- "ter General in pursuance of said Act is hereby annulled." (18 *Stat. at Large*, 342.)

The contract of 1866 was kept and executed by the parties, and—

The claimants maintained and ran the line of steamships for the transportation of frieght and passengers between New York and San Francisco, *via* the Isthmus of Panama, referred to in Section 6 of the Act of 1872, aforesaid; as to that, there is no question.

The Court of Claims found, that the Steamship Company was only entitled to recover for the voyage of the Steamship "City of Peking," and rendered judgment in its favor for the sum of forty-one thousand six hundred and sixty-six dollars and sixty-six cents, ($41,666.66.)

II.

BRIEF OF ARGUMENT.

The principal questions presented are:

1st. What is the true and correct construction of the contract between the plaintiff and the Government? Did it require the additional monthly service to be performed *wholly* by the new kind of ships; *i. e.* (of *iron*, and of four thousand tons register? etc.) or could the service be performed "by first class American sea-going steamships," which had before been accepted for the like service under the former contracts: *Provided*, That the ships which should be *thereafter* offered and accepted should be of iron, and of the superior kind?

2d. Was the contract still subsisting until annulled by the Act of Congress of March 3d, 1875; and what was the effect of that act?

1st. From an examination of the law itself (3d and 6th Sections of the Act of June 1st, 1872), it is very apparent, it seems to us, what the intention of that act was. It was evidently contemplated that the Pacific Mail Steamship Company would become the contractor under that act. Had it been intended that the additional service provided by that act should be performed by the new kind of superior ships, it would have been very easy and very natural to have so said in the forepart of Section 3, by inserting it after the words "for the conveyance of an additional monthly mail, "on the said route, at a compensation not to exceed the rate "per voyage now paid under the existing contracts;" but, instead of that, it says, "and upon the same conditions and "limitations as prescribed by existing acts of Congress in "reference thereto, and the respective contracts made in pur-"suance thereof." Nor would it have been expressed under a proviso. Nor would the word "*hereafter*" have been used; for by the simple omission of that word, the declaration and meaning would have been clear enough, as it would

then have read: "*Provided*, that all steamships accepted for "said service shall be of not less than four thousand tons," etc. In fact, to hold that the law contemplated that the service should be exclusively performed in those superior ships, it is necessary to strike out the word "*hereafter*" in that connection. Again in the 6th section it is provided that, "if the contract * * * shall be made with the "Pacific Mail Steamship Company, *or shall be performed in* "*the said Company's ships*," etc., clearly contemplating the probability of that Company becoming the contractor, and the further fact that the service might be performed in the ships which then belonged to that Company. This is the conclusion at which the Attorney General and the Solicitor General arrived, as given the Postmaster General.

It has been said, and may be urged, that in making the contract, the Postmaster General departed from the evident intention of the statute in this respect; and the advertisement of the Postmaster General under the act, and which is referred to in the contract, may be cited in support of that conclusion. It is true that the advertisement, in one or two clauses, points in that direction, for it says, that "proposals "will be received," etc., "for conveying the mails of the "United States, by means of an additional monthly line of "first class American sea-going steamships, of not less than "four thousand tons register each, and of sufficient number "to perform twelve round trips per annum," etc.; but the advertisement also contains a copy of the statute, and provides in another clause that, "the steamships offered for the "service must be American built steamships of the first "class, in all respects conforming to the requirements of "the laws authorizing the service," etc.

In this connection we ask attention to a clause in the proposals of the Steamship Company which were made in answer to the advertisement of the Postmaster General. The Company says: "We are now building two iron pro-"pellers of about forty-five hundred tons register," etc., * * * "until they can be put in commission, and

"afterwards, whenever circumstances may require us to "relieve them temporarily, we propose to perform the ser- "vice with one of the steamships heretofore accepted for the "China mail service, viz: 'America,' 'Japan,' 'China,' "'Great Republic,' 'Alaska,' and 'Colorado;' or, in case "of need, with the 'Constitution,' heretofore accepted as a "spare steamer for said service." (*Record, p.* 14.)

The contract itself provides that the plaintiff shall transport the mails of the United States between the ports of San Francisco and Hong Kong, in China, touching at Yokohama, Japan, both on the outward and inward passages, to land and receive mails with the regular connecting branch line of steamers between Yokohama and Shanghai, China, twelve round trips per annum, by an additional monthly line of first class American steamships, to "con- "form in all respects to the requirements and provisions of "the 3d Section of the Act of Congress above cited, approved "June 1st, 1872, and the advertisement of the Postmaster "General issued in accordance therewith. * * "And do bind themselves that the steamships *hereafter* "offered for the service shall be of not less than four thous- "and tons register each, and shall be built of iron, &c." (*Record, p.* 5.)

And the contract further provides "that this contract shall "*in all its parts* be subject to, and *in all respects* governed by, "the requirements and provisions of the 3d and 6th Sections "of the Act of Congress, approved June 1st, 1872," etc. (*Record, p.* 7.)

Now, if there is any discrepancy between the meaning of the law and the *advertisement* of the Postmaster General, surely as the contract was expressed to be "wholly subject "to," "in conformity with," "and to be governed by the "Act of Congress," then there can be no discrepancy, we submit, between the *contract* and the law.

What may have been the opinion of the Postmaster General as to the meaning of the statute, is not material; he evidently intended to make the *contract conform to the law*,

whatever the law might be, and in this he succeeded, if there is any force or meaning in the language above quoted.

The primary and principal object of the law was the securing of a semi-monthly mail service between this country and Japan and China by American steamships, and the conveying of the mails upon all the ships which the plaintiff might run on that line, or any branch of it, without extra compensation. This is apparent from the manner in which the statute was constructed, as well as from its spirit. The secondary objects were to promote the building of large iron steamships which in case of war the Government might use as naval vessels, and the continuance of the steamship service between New York and San Francisco, *via* Panama, as provided in the 6th Section.

The primary and principal objects are clearly expressed in the forepart of Section 3 of the Statute, and apparently that clause, exclusive of the first proviso, completed the statute as first drawn. That clause provides that the Postmaster General shall make a contract for the additional service "upon the same conditions and limitations as prescribed "by existing Acts of Congress in reference thereto, and the "respective contracts made in pursuance thereof." One of the "conditions" "prescribed by existing Acts of Congress" was, that the service should be performed in first class American steamships, of three thousand tons register. That clause further provides that "the contractors, under the pro-"visions of this Section, shall be required to carry the United "States mails during the existence of their *contracts*, * * "on *all* the steamers they may run on said line, or *any part* "of it, or *any branch* or extension thereof." (*Record, p.* 12.) Clearly this is intended to include something more than the new contract authorized by the Act. It includes all the contracts of the party who contract for the additional service. Not only that, but it includes all the steamers which that party should run upon *the line*, or any branch or extension, or part of it. Now, we submit that the proviso following, which requires "that all steamships *hereafter* accepted for

"*said service* shall be of not less than four thousand tons "register," etc., applies to all the service referred to in the former clause, and not exclusively to the additional monthly service.

This seems to us the only easy, natural and consistent construction of the Act of Congress and the contract, namely; that they provided for an additional monthly mail between San Francisco, Japan and China, the act contemplating that the contract for this service would be made with the Pacific Mail Steamship Company, (which already had a ten year contract for a monthly service—with about three years yet to run—in three thousand ton ships duly accepted by the United States,) thus making a semi-monthly service. The new service to be performed in all respects like the old; that the new additional service might be performed in the ships which were performing the existing service, and if any additional ships should be necessary, *they* should be of iron, and of four thousand tons register; and that this requirement prescribing the character of all ships which might be *thereafter* offered should apply to ships offered for service under both the first and second contracts.

If we are right in this view of the construction which should be given the law of 1872, and the contract made in pursuance of it, then the next question is, has the Steamship Company done or suffered anything to be done which ought to *estop* it from insisting upon the enforcement of that construction?

1st. It is said, and with considerable truth, that the parties to the contract, viz: the Postmaster General and the Pacific Mail Steamship Company themselves, construed the contract as requiring the "additional monthly service" to be performed wholly in the four thousand ton iron ships, and it is claimed by the Attorney for the Government, that the Company, appellant, is bound by that construction.

As to this question, it matters little what was the construction the Posmaster General gave it, for a misconstruction by him alone, would bind nobody.

The proposal of the Company for the service under the statute of 1872, in answer to the advertisement of the Postmaster General, shows that they at that time properly construed the law, for they say:

"We are now building two iron propellers of about for-
"ty-five hundred tons register," etc., * * *
"until they can be put in commission, and afterwards, when-
"ever circumstances may require us to relieve them tem-
"porarily, we propose to perform the service with one of
"the steamships heretofore accepted for the China mail
"service, viz: 'America,' 'Japan,' 'China,' 'Great Repub-
"'lic,' 'Alaska' and 'Colorado,' or, in case of need, with
"the 'Constitution,' heretofore accepted as a spare steamer
"for said service." (*See record, p.* 14.)

That "proposal" *was accepted* by the Postmaster General, without qualification. (*See record, p.* 14.)

But there is evidence in the record, tending to prove that between October, 1873, and February, 1874, the Steamship Company fell into the same misapprehension and misconstruction of the statute that the Postmaster General seems to have given it. This evidence is contained in the letter of the Company, of November 1st, 1873, (*Record, pp.* 15 *and* 16,) and in the fact that for the additional monthly service the Company accepted "sea postages" from October to December, 1873, inclusive, amounting to one thousand five hundred and ten dollars and eighty-one cents, ($1,510.81.) (*Record, p.* 18.)

The letter of the Company alluded to was in reply to a letter of the superintendent of foreign mails of the Post Office Department, dated October 24, 1873, asking for the reasons which had prevented the Company from commencing the performance of the additional monthly mail service, etc. (*Record, pp.* 14 *and* 15.) And the Company, in their reply, gave the reasons why the iron four thousand ton ships were not ready to perform the service, showing that every exertion had been made in the power of the Company to complete them; but they say in the letter: "We have the

"honor to ask your attention to the fact that *we are perform-*
"*ing the semi-monthly service with our mail steamers, now ac-*
"*cepted as such by the Department, under our first China mail*
"*contract,*" etc. (*Record, p.* 16.)

And after December 31st, 1873, the Company declined the "sea postages" for this additional monthly service, and insisted upon its rights under the contract. (*Record, p.* 18.)

If this were an *ordinary* contract, and its meaning *obscure and doubtful*, we frankly admit that the parties should be held to their own cotemporaneous construction of it; but cotemporaneous exposition is not to be called in aid when the language of a contract is clear and precise, but only where it is equivocal or doubtful, as in the construction of ancient statutes and charters and other instruments, the meaning of which is obscure.

1 *Story on Contracts, p.* 779, *par.* 805.
Mudgett's Case, 9 *C. C. R.*, 475.

Courts are bound to give legal effect to a contract, according to the *true intent* of all the parties; or, when this intent is doubtful, according to the construction put upon it by the manner in which it has been executed by both, or by one, with the expressed or implied assent of the other.

1 *Hilliard on Contracts, p.* 281, *par.* 12.

This, however, being a statutory contract,and its enforcement depending upon the true meaning of the statute, the exposition or construction of it by the parties should not be resorted to.

U. P. R. R. vs. *United States*, 1 *Otto*, 79.
United States vs. *Dickson*, 15 *Peters*, 161–2.

There are no elements of an estoppel in this case, nor of such a waiver by the Steamship Company of its rights under the contract as should bind it.

"*Estoppel* consists of acts or declarations by which one

"induces another to alter, injuriously to himself, his previous "position."

Brown vs. *Wheeler*, 17 *Com.*, 345.
Rangely vs. *Spring*, 21 *Maine*, 130.
Cummings vs. *Webster*, 43 *Ind.* 192.

No *estoppel* can arise from an act done in submission to supposed legal authority.

Jersey City vs. *State*, 30 *N. J. L.*, 521.

The act of a party, done in ignorance of his rights, does not estop him.

Newman vs. *Edwards*, 34*th Pa. St.*, 32.

An estoppel in pais can only be set up as a means to prevent injustice.

Bigelow on Estoppel, 437, 508.
Thomas vs. *Bowman*, 29*th Ill.*, 426.
Charlestown vs. *County Comrs.*, 109 *Mass.*, 270.
Dunnell Mfg. Co. vs. *Pawtucket*, 7 *Gray*, 277.

The Company made no declaration, and performed no acts which have induced the Government to change its position, injuriously to itself, in its dealings with the Company. Nor is there anything in the record to indicate that the Company knowingly and understandingly waived any of its legal rights in such manner as to effect a change in the terms of the contract.

If we are right in this view of the construction which should be given to the Act of 1872, and the contract made in pursuance of that Act, then the Steamship Company is entitled to judgment for the voyages made by the ships which had been accepted under the former contract, viz: the "China," "Japan," "Colorado" and "Alaska," and of the "City of Peking," which sailed from San Francisco on the 20th of Feb-

ruary, 1875, making seven voyages, at forty-one thousand six hundred and sixty-six dollars and sixty-six cents ($41,666.66), per voyage, making altogether the sum of two hundred and ninety-one thousand six hundred and sixty-six dollars and sixty-two cents, ($291,666.62.)

2d. If we are wrong in the above conclusion, and should the Court hold that the law required that the service to be performed under the contract of the 23d of August, 1873, should be wholly in the new kind of superior iron ships as a condition of the payment for the transportation of the mails under that contract, then the second question arises whether the contract was still in force so as to make it obligatory upon the Government to pay for the service actually rendered by the steamship "Peking" before the Act was repealed, and the contract annulled by Congress in 1875. It will be observed that neither the law of 1872 nor the contract anywhere, made the *time* when the service should be commenced by the iron ships, *of the essence of the matter*. Nor did the Government so treat the question. It regularly gave the mails to the plaintiff to be transported upon all its ships over the route and its branches, and required the plaintiff to transport them.

The plaintiff was the only sufferer by the delay in furnishing the iron ships, for its contract would expire in ten years from the 1st of October, 1873, in any event; while in the meantime, until the iron ships were ready, it performed all the service in other ships, without the compensation to which it would be entitled if the service were performed by the iron ships. Again, the Government knew that the plaintiff was straining every nerve and exercising all the diligence in its power to provide those ships, and made no objection and gave no notification that the contract was forfeited. On the contrary, through its Attorney-General, the Government declared the contract to be still in force; sent its naval officers to New York, and inspected the "City of Peking" and the "City of Tokio," as before stated, accepted them for the service, and thus

induced the plaintiff to send them by a long and expensive voyage round Cape Horn to San Francisco, for the purpose of taking their place in the line, and there delivered its mails to the "City of Peking," and dispatched it with those mails on its round voyage, as heretofore stated.

If the contract was to use the iron ships from and after the 1st of October, 1873, that was not all the contract, nor the chief purpose of it—other things were embraced in it, and were the *principal* purposes of it. The first of these *was the transportation of an additional monthly mail;* the second was, the carrying of *other additional* mails, in *any and all the ships* (*of whatever kind*) which the plaintiff might run upon that line, or any part of it, or upon any branch, or extension of it, with the mail messengers or agents in charge, etc. These principal purposes and objects of the contract were performed by the claimant, with the permission of the Government and its concurrence; while at the same time the claimant was using all due diligence to perform the less important and subordinate purpose, which it was prevented from accomplishing by no *laches* of its own.

Suppose the case of a railroad company contracting to carry the mails between Washington and San Francisco, daily, for ten years, beginning on the 1st of October, 1873, for $365,000 per annum, being $1000 for each trip, providing that the railroad track should be laid with steel rails, and the mail cars should be of iron, and fire proof; and with a further provision, that during the period covered by the contract, the company should carry the mails on all its other trains which should run over the same route, or any part of it, etc., without other compensation. The company was unable, with due diligence, to put down the steel rails, or procure the iron mail cars; nevetheless, the Postmaster General, fully aware of the facts, delivers the mails to the company, who carries them with due frequency, security and speed, between the points named, and also carries the mails on all its other trains, etc. This state of things continues for several months, before the railroad

company is able to get down the steel rails or procure the iron cars, then the Government inspects the road and the cars, pronounces them correct, places its mails in the new cars, and starts the train for San Francisco. It makes one trip, when Congress annuls the contract. Now, the Government claims that it should not pay for the transportation, as under the contract, before the steel rails and iron cars were prepared, nor even for the trip made after they were used!

At the time Congress annulled this contract, a court of equity would have enforced a specific performance of it, had the contract been between parties who were subject to the decrees of a court of chancery.

In Brashier vs. *Gratz*, 6 *Wheat.*, 533, Chief Justice Marshall, delivering the opinion, says: "The rule that time is "not of the essence of a contract, has certainly been recog- "nized * * * * * there can be no doubt that a fail- "ure on the part of the purchaser or vender, to perform his "contract on the stipulated day, does not of itself deprive "him of his right to demand a specific performance at a "subsequent day, when he shall be able to comply with his "part of the engagement, etc."

In Taylor vs. *Longworth, et al.*, 14 *Peters*, 174, Justice Story, delivering the opinion, says: "In the first place, "there is no doubt that time may be of the essence of a con- "tract for the sale of property. It may be made so by the "express stipulations of the parties, or it may arise by "implication from the very nature of the property, or the "avowed objects of the seller or the purchaser. And even "when time is not thus either expressly or impliedly of "the essence of the contract, if the party seeking a specific "performance has been guilty of gross laches, or has been "unexcusably negligent in performing the contract on his "part; or if there has, in the intermediate period, been a "material change of circumstances, affecting the rights, "interests or obligations of the parties; in all such cases, "courts of equity will refuse to decree any specific per-

"formance, upon the plain ground that it would be inequi-
"table and unjust. But, except under circumstances of
"this sort, or of an analogous nature, time is not treated
"by courts of equity as of the essence of the contract; and
"relief will be decreed to the party who seeks it, if he has
"not been grossly negligent, and comes within a reasonable
"time, although he has not complied with the strict terms
"of the contract."

See also, 1 *McLean's Report*, 400.
9 *Cranch*, 458.
7 *Vesey*, 265.
Salomon vs. *U. S.*, 19 *Wall.*, 17.
Barnard vs. *Lee*, 97 *Mass.*, 94–5.
2 *Chitty on Contracts*, *p.* 1068.

When the act was passed by Congress there were no circumstances, no facts indicating that Congress regarded it essential that this service should begin on the 1st of October rather than any other day. Not a word in the debates to indicate it. That day was convenient, as the beginning of a quarter, for keeping accounts in the Auditor's office. There was no exigency on that day, nothing which required 4000-ton iron ships more than any other day.

The rule regarding the *effect* to be given to a written contract, when the United States are a party, is the same as between man and man.

7 *Court of Claims Reports*, 113.
1 " " " 28.
8 *Wallace*, 358.

The contract also provides, "that in case of failure *from*
"*any cause to perform any* of the regular monthly voyages
"stipulated for in this contract, a *pro rata* reduction shall be
"made from the compensation on account of such omitted
"voyage or voyages." If, therefore, the Court construe the contract as requiring the service to be performed in the large iron ships exclusively, then the "*failure*" to do so "*from any*

cause," is provided for in the contract, and the forfeiture prescribed. It is not a forfeiture of the contract and all rights under it; but of the pay for the service which is omitted—the "*omitted voyages.*"

The stipulation is general and sweeping: "*Any* of the "voyages;" "from *any* cause."

This applies as well to voyages omitted at the beginning of the contract term, as in the middle, or near the end of it.

The contract also provides, that the "*Postmaster General* "*may* annul the contract for repeated failures," etc.; and that "the contract may at any time be terminated by Con- "gress."

The Postmaster General *never annulled it*, and Congress did not "terminate" it, until the Act of March 3d, 1875.

If it be answered, that those provisions of the contract above quoted, in reference to a *pro rata* deduction, in case of failure to perform any of the service, and the right of the *Postmaster General*, to annul the contract, etc., were not authorized by the Act of 1872, we reply: That, by the express provisions of that act, the Postmaster General was authorized to make the contract upon the same conditions and limitations as were prescribed in the contracts before made under the former laws; and that both those provisions were contained in the contract made in pursuance of the Act of February 17th, 1865. (*See record, p.* 10.)

The contract provides for payment "for the service *quar-* "*terly*, at the rate of forty-one thousand six hundred and "sixty-six dollars *for each round voyage.*" The quarters ended the last days of December, March, June and September, respectively.

There was no fraction of a voyage; therefore, the plaintiff is entitled to recover for the round voyage of the "City "of Peking," which was dispatched on the 20th of February, 1875, in any event, (upon the hypothesis that the law required the service to be performed wholly in the iron ships, and that the "City of Peking" was properly accepted.)

But, if the Court holds—as we are confident it should and will hold—that the service performed in first-class American sea-going steamships, which had been accepted for the like service under former contracts prior to June 1st, 1872, was a proper service under said act, then the plaintiff is entitled to recover for the seven voyages.

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IN THE

SUPREME COURT

OF THE UNITED STATES